> provide at that point that would strengthen his defence, and there was nothing that could be gained by a further adjournment. It was, and still is, my view that it would not have been in Mr. Laliberte's best interests for me to withdraw in the face of an impending application for summary judgment."

Froese argued before the Chief Justice that the Plaintiff's Affidavit called for cross examination, and that a question does not suggest a conclusion and that only nominal damages would be suitable in the absence of proof of actual damage. From the notes prepared and material on Froese's file, a credible argument was advanced and supported by extensive research. The Chief Justice did not agree with Froese's arguments and proceeded, on the Plaintiff's affidavit alone, to grant summary judgment: "The defendant chose not to file any sworn material. Accordingly, the entire evidence before the Court is contained within the plaintiff's affidavit".

After initially arguing in favour of cross examination on the Plaintiff's affidavit, Froese eventually declined the Chief Justice's suggestion of an adjournment, which was offered in the face of the "very sparse" and "very thin" evidence. Froese "...responded that such an adjournment was not necessary." and by way of explanation in the course of the present investigation that "it was my opinion that the plaintiff had not brought a strong case for damages, a weakness that he could rectify at any time by filing a supplemental affidavit."

The judgment states that "[b]oth counsel expressed their desire to proceed and represented that their clients were content to have the summary judgment application determined on the material before the Court." Froese denies this: "...I did not represent that my client was content to proceed, but rather made it clear to the Court that my client was not aware of the application."

The Chief Justice declined to permit cross-examination on the Affidavit and held that there was precedent for holding that a question, as opposed to a statement, could amount to defamation. Certainly, in this case the Chief Justice had "no difficulty" in finding that the question posed by the defendant constituted a defamatory statement, and by implication disagreed with Froese's argument that a question is not an assertion of fact. This effectively ended the litigation.

Shared responsibility

The accepted version of what Laliberte said on television is contained in the Plaintiff's Affidavit (plus several variations thereof as interpreted and enhanced in the press). I assume, without evidence, that both counsel immediately confirmed the exact wording as part of their duties to their respective clients and to the Court, before proceeding.

Laliberte from an early date asserted that others in the Liberal campaign committee room had given him the question or questions in written form to ask on the live television broadcast, together with the telephone number. He had not originated the idea.